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FOURTH UNITED NATIONS CONFERENCE TO REVIEW
ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED
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Geneva, 25-29 September 2000
Item 6 (b) of the provisional agenda

KIEV DECLARATION

The Regional Conference on Competition Policy for Commonwealth of Independent States Countries and Countries of Central and Eastern Europe, Kiev (Ukraine), 13-14 July 2000, held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session[1], adopted the Kiev Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19 - TD/B/COM.2/CLP/14).

GE.00-51894 (E)

KIEV DECLARATION

Regional Conference on Competition Policy for Countries members of the Commonwealth of Independent States and Countries of Central and Eastern Europe (Kiev, Ukraine, 13-14 July 2000)

Participants in the Conference from countries members of the Commonwealth of Independent States and countries of Central and Eastern Europe emphasize the significant role played by competition law and policy in the development of market economies of these countries. The implementation of State antimonopoly policy directed towards the restriction of monopolism and the development of competition facilitates the creation of a favourable entrepreneurial climate, the inflow of foreign investments and the free movement of goods, capital and services.

At the same time, taking into account the effects of the liberalization and globalization of international economic relations and the necessity of establishing a more effective and equitable global economic order, participants in the Conference underline the importance of establishing and developing effective international instruments which would make it possible to combine the most efficient possible allocation of resources with equitable opportunities, in particular for transition countries, to participate in the functioning of the market.

In this connection, participants in the Conference fully support the view expressed in the UNCTAD Bangkok Declaration of February 2000 that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the field of trade, investment, competition and finance ..." (document TD/387, para. 4, 18 February 2000).

In the opinion of participants in the Conference, the relevant international instruments should include, on the one hand, mechanisms of cooperation between different countries in the development and improvement of national laws and, on the other hand, international norms to be applied in the sphere of competition. Mechanisms of that sort should also facilitate the effective implementation of competition law and policy.

Participants in the Conference stress that it is important that competition should be defended both by government officials and bodies and by market participants, including economic entities and consumers represented by their public organizations. In this connection, participants in the Conference draw special attention to the necessity of a dialogue with civil society about matters of competition policy; it is considered the prime requisite for educating the public in this field and ensuring its support for competition policy.

In view of the foregoing, participants in the Conference appeal to the Fourth United Nations Conference to Review Restrictive Business Practices to pay special attention to the following matters:

1. Taking into account the process of integration of countries members of the Commonwealth of Independent States and countries of Central and Eastern Europe into the international economic system, which provides for, in particular, the improvement of antimonopoly regulation in these countries in accordance with international principles and norms, the high esteem for UNCTAD's action to develop international cooperation in this sphere and UNCTAD's universal status, it would be expedient to strengthen further this organization's role in international cooperation in the sphere of competition.

2. The integration of countries of the region into the world economy requires the improvement of economic regulation in these countries in accordance with international principles and norms and the more active application of the experience of countries with a long-standing tradition of antimonopoly regulation. In this connection, it would be desirable to expand technical assistance by UNCTAD, an organization with wide experience in the area of international cooperation in competition policy, to the States of this region. The basis for this respect should be the statement in paragraph 140 of the Bangkok Plan of Action to the effect that UNCTAD should continue to provide and expand its technical assistance to interested countries regarding elaboration of national laws and institutional capacity-building. The expansion of UNCTAD's contribution to the development of regional cooperation between the countries of the region in the sphere of competition could be effected through, in particular, participation in the preparation of amendments to legislative acts. UNCTAD could also facilitate the harmonization of competition rules in the region through the elaboration of model laws and guidelines. The technical assistance could also be provided in the form of training seminars and conferences for specialists of competition authorities.

3. Participants in the Conference also underline the expediency of expanding further UNCTAD's research role in the sphere of competition. With the interests of the countries of the region in mind, effect should be given to paragraphs 142 and 143 of the Bangkok Plan of Action, which respectively provide: that "UNCTAD should continue to examine issues related to competition law and policy of particular relevance to development", that it would be expedient to "prepare periodical reports on restraints in strategic sectors and their impact on developing countries and countries with economies in transition, particularly on their competitiveness" and that UNCTAD should study in depth the impact on competition of possible international agreements (paragraph 142) and that UNCTAD should "study, clarify and monitor, including through specific country and case studies, the relationship between competition and competitiveness as well as trade-related aspects of competition" (paragraph 143).

UNCTAD could prepare studies on the problem of exercising antimonopoly control over economic concentration in countries of Central and Eastern Europe and countries members of the Commonwealth of Independent States and studies of the interaction between foreign-trade policy and competition policy. Special attention could be paid to the consequences of antidumping measures for competition on the internal market.

4. UNCTAD's role in education processes and in the clarification of positive effects of competition should also be expanded. In particular, it would be expedient if UNCTAD assisted the countries of the region in educating the public at large and representatives of the private sector about competition law and policy, in involving the private sector and consumer

organizations in the educational process, in introducing into universities and professional institutions courses on the economic and legal grounds for competition and consumer policies and in preparing and sponsoring publications.

5. UNCTAD should look very carefully into the possibility of making preliminary steps towards the elaboration and implementation of international competition rules on the basis of the good will of the countries that are legally and organizationally readiest to introduce such rules, concentrating its attention, in particular, on the following:

Initiating the preparation of an international agreement on competition whose provisions would extend to anticompetitive actions both of governments and of economic entities;

Embodying in such an agreement basic principles for the following:

1. National treatment in competition law and practices;

2. Most-favoured-nation treatment in competition law and practices;

3. Transparency of national law and policy;

Establishing in such an agreement basic mechanisms for the following:

1. Cooperation between competition authorities:

2. Prohibition of the most dangerous cartels; mutual recognition of decisions on cartels, with a view to simplifying the procedure for implementing decisions which concern foreign economic entities; introduction of a procedure for notifying national competition authorities about export cartels;

3. Adoption of international framework rules for antimonopoly control over economic concentration;

4. Creation of specific (special) conditions for transition and developing countries;

5. Rendering of technical assistance to the said countries;

6. Establishment of dispute settlement procedures for the purpose of ensuring observance of the principles laid down.

UNCTAD should study carefully the remarks which substantiate the prematurity of, and the barriers to the introduction of international competition rules, and should, when rules are elaborated, take those remarks into account in the form of restrictions on the rules' sphere of application or the number of participants or in any other form.

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CASABLANCA DECLARATION

The Regional Seminar on Competition Law and Policy for Europe and the Mediterranean (Casablanca, Morocco, 18-19 July 2000), held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the Casablanca Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TD/B/COM.2/CLP/14).

CASABLANCA DECLARATION

Under the auspices of His Majesty King Mohammed VI, the Seminar on Competition Law and Policy for the Euro-Mediterranean region was held in Casablanca (Morocco) from 18 to 19 July 2000, organized by the Ministry of General Government Affairs in partnership with the United Nations Conference on Trade and Development (UNCTAD).

This seminar formed part of the preparations for the implementation of the national competition policy pursuant to the adoption by the Moroccan Parliament of the Price Liberalization and Competition Act (No. 6/99), and signalled the start of the publicity campaign by the Moroccan Government to promote new rules underpinning the culture of competition.

The objectives of the seminar were:

- To publicize the general provisions of the Act among the relevant judicial and administrative authorities and economic actors (producers, distributors, consumers);

- To garner active support among economic actors, thereby ensuring better enforcement of the provisions of the Act;

- To develop regional and international cooperation in the field of competition by multiplying shared experiences and deepening cooperation between the agencies and authorities responsible for competition;

- To begin preparations for the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices and the United Nations model law on competition.

The seminar was attended by representatives from all the Arab countries in the Mediterranean region, the European Union, and various African countries, and brought together prominent national and international experts, representatives of regional and multilateral institutions, community welfare associations, professional organizations, consumers' associations, and political and academic figures. The participants drew inspiration and guidance from the statement delivered at the opening of the seminar by His Majesty Mohammed VI, the King of Morocco. There followed two days of studies and analyses, including very fruitful debates and discussions on anti-competitive practices, mergers and scenarios for the successful enforcement of competition law.

The following conclusions were reached:

- The encouragement of competition is a complementary element in any effort to modernize and upgrade an open economy in the context of the increasing globalization of markets. Price liberalization depends on fair competition and leads to technological innovation, development and social welfare;

- The task of ensuring that market rules operate smoothly through the monitoring of anti-competitive practices, unfair competition and the trend towards economic structures such as mergers and cartels is essential for market regulation;

- The elaboration and enforcement of competition law are tasks which increasingly extend beyond national borders. The globalization of markets militates in favour of a multilateral platform and an intensification of cooperation between competition authorities;

- The need to establish a Euro-Mediterranean framework to promote competition, in conjunction with efforts to develop bilateral agreements based on the common principles of non-discrimination, fair trade, transparency, and action to thwart strong cartels, is now widely accepted;

- As tools for economic development, competition law and policy should take account of the distinctive features of individual countries. In every case, competition should create a climate favourable to trade and investment;

- The role of UNCTAD is crucial in strengthening multilateral cooperation, ensuring the harmonization and convergence of competition law and policies, and publicizing a worldwide culture of competition with a view to securing an equitable division of the benefits of globalization while minimizing its adverse consequences.

At the conclusion of the seminar, the participants recommended the following action by the Fourth Review Conference:

- Make provision for technical cooperation programmes focusing on training and skills-acquisition in developing countries, including training for law officers and future executives responsible for overseeing competition, for example by developing regional cooperation and subregional technical assistance programmes;

- Organize inter-country studies and exchanges with a view to securing increased convergence of competition law and policies;

- Study the relationship between the enforcement of competition law and policy, the fight against poverty and the protection of consumer rights;

- Assess the impact and social cost of the existence of national and international cartels;

- Promote advocacy of a culture of competition in developing countries and the least developed countries;

- Study the links between competition and regional integration;

- Examine the possibility of setting up a special fund to strengthen the capacities of competition authorities in developing countries through the allocation of a proportion of the fines imposed by such authorities on actors who engage in anti-competitive practices;

- Establish an alert threshold for mergers all over the world, beyond which the relevant authorities would take joint action to preclude the formation of monopolies or over-dominant international positions;

- Examine the most effective way to increase emerging competition authorities' capacity to detect international anti-competitive practices;

- Promote the adoption by the United Nations of a World Day dedicated to competition and consumption;

- Study the connection between competition, investment and development;

- Implement the proposal to set up a training centre for African competition authorities, such as recommended in the Tunis Declaration pursuant to the Third Review Conference in 1995;

- Ensure that seminars similar to the Casablanca meeting on competition law and policies are organized in Euro-Mediterranean countries.

Casablanca, 19 July 2000

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DECLARATION OF THE COMMONWEALTH OF INDEPENDENT STATES ANTIMONOPOLY AUTHORITIES

At the request of the Government of the Russian Federation, the attached text of the Declaration of the antimonopoly authorities of the Commonwealth of Independent States, adopted by the Inter-State Council for Antimonopoly Policy of the Commonwealth of Independent States at its eleventh session on 12 July 2000, is made available to the Review Conference.

GE.00-51908 (E)

Declaration of the antimonopoly authorities of the Commonwealth of Independent States for the Fourth United Nations Review Conference on Restrictive Business Practices

Kiev, 11-12 June 2000

The participants at the eleventh session of the Inter-State Council for Antimonopoly Policy of the countries of the Commonwealth of Independent States, held on 11 and 12 July 2000 in Kiev, note the important role played by competition law and policy in the development of the market economies of the countries of the Commonwealth. The conduct of a State antimonopoly policy, designed to suppress monopolies and to foster competition, is conducive to the creation of a favourable entrepreneurial climate, the attracting of foreign investment and the free movement of goods, capital and services.

The cooperation in the sphere of competition pursued by the countries of the Commonwealth over for the past seven years on the basis of inter-State treaties has fully demonstrated the effectiveness of regional interaction in this most important area of economic development. The regular exchange of experience and the harmonization of the countries' legislative frameworks have created considerable synergies, in which the limited technical and professional resources of the antimonopoly authorities of the Commonwealth countries have been used to the maximum effect to set in place an environment conducive to competition.

Competition-related issues are particularly topical at the current time in the context of the globalization of economic development and the growth of restrictive business practices.

The competition policy implemented within the countries of the Commonwealth of Independent States takes due account of the development trends of the world economy and of world economic relations. The continuing liberalization of foreign trade and investment systems under way in many countries, including those of the Commonwealth, is an important factor in heightening competition at the international level. In these conditions, the antimonopoly authorities of the Commonwealth of Independent States advocate strengthened international cooperation in monitoring the restrictive business practices of companies, including multinational corporations, so as to ensure the effective development of economic links and to eliminate artificial barriers to market access.

In the light of the foregoing, the participants in the meeting recommend:

1. Taking due account of the process of integrating of the countries of the Commonwealth of Independent States into the international economic system, which is predicated, in particular, on improving the antimonopoly regulations of these countries, bringing them into line with international principles and norms, and highly commending the work of UNCTAD, as a body of global standing, in promoting international cooperation in this area, the participants at the meeting **express their support for the further strengthening of the role of UNCTAD in international cooperation in the area of competition.**

2. For the countries of the Commonwealth to be integrated into the world economy, efforts must be made to improve the economic regulations in these countries and to bring them

into line with international principles and norms, making increased use of the experience of countries with long traditions of antimonopoly regulation. To this end, it is essential **to expand the technical assistance afforded to the countries of the Commonwealth of Independent States by UNCTAD, as an organization with a wealth of experience in the area of international cooperation in matters of antimonopoly policy.** The expanded contribution of UNCTAD to the promotion of regional cooperation of the Commonwealth countries in the area of competition could take the form, *inter alia*, of its participation in preparing amendments to legislative instruments and in drafting model guidelines.

3. The participants in the meeting also **support the further expansion of the research work conducted by UNCTAD into competition.**

In particular, it would be useful to conduct research into the problem of exercising antimonopoly control over the concentration of economic activity in the countries of the Commonwealth, into the status and functions of the antimonopoly authorities of the Commonwealth and into the interaction between foreign trade policies and antimonopoly policies.

4. Efforts should also be made **to expand the role of UNCTAD in educational measures and in the advocation of competition.** In particular, UNCTAD should render assistance to the countries of the Commonwealth in strengthening the status and enhancing the image of their antimonopoly authorities, in developing training programmes relating to competition and the protection of consumers' rights, in the compilation and publication of appropriate training materials and in ensuring the greater transparency of antimonopoly policies for entrepreneurs and the general public.

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JAIPUR DECLARATION

The Regional Seminar on Competition Law and Policy for Asia and the Pacific (Jaipur, India, 13-15 April 2000), held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the Jaipur Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TD/B/COM.2/CLP/14.

GE.00-51915 (E)

JAIPUR DECLARATION

The Regional Seminar on Competition Law and Policy for Asia-Pacific was held in Jaipur (India) from 13 to 15 April 2000, within the preparatory Process for the Fourth United Nations Conference to Review all Aspects of the Set.

Concerned that globalization should be made both more efficient and more equitable, as called for by UNCTAD X in the Bangkok Declaration (paragraph 4 of document TD/387 of 18 February 2000), the Seminar fully supports the view that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the fields of trade, investment, competition and finance...". The Seminar stresses in this respect the need for competition to be supported by effective rules and policies aimed at maximizing efficiency in the allocation of resources while at the same time providing equitable opportunities to participate in the market.

In the exchanges of experiences that took place during the Seminar, it became clear that while some developing countries in the region have newly adopted competition legislation, others have older systems that need to be revised in order to improve their effectiveness. Other countries, which are in the majority, still have not adopted competition legislation, although most are aware of the issues and some have already prepared draft bills and are receiving technical assistance from international organizations.

The importance of cooperation in this respect, and the necessity for international norms was underlined. In the formulation of national competition law and policy, while the core principles of competition law and policy were recognized as having broad application, competition legislation and its implementation needs to take into account each country's level of economic development, judicial system, social system and specific characteristics.

Participants emphasized the need for institution and capacity building for the effective implementation of competition law and policy. The needs for technical cooperation included advisory services for the drafting, upgrading and improving of domestic competition law and policy, as well as rules for cooperation among States. It was noted that cooperation among competition authorities was increasingly necessary in view of the globalization of markets, as domestic competition laws and systems were limited by national boundaries. UNCTAD and other international organizations active in the field of competition were therefore called upon to expand assistance to the countries in the region, to support their efforts in promoting competition.

The importance of competition advocacy was underlined with respect to both government officials and administrations as well as market actors including consumers and representatives of the private sector. The importance of establishing dialogue with civil society was emphasized, as an effective means to educate the public and the representatives of the private sector in this field.

Participants emphasized that competition policies are also made more effective when consumers are empowered to make informed decisions, and when they contribute to monitoring anti-competitive practices and exert consumer purchasing power to sanction such practices.

Accordingly, in line with the UNCTAD X Plan of Action on competition issues and considering the importance of competition policy for promoting economic development and economic welfare, the Seminar recommends that the Fourth Review Conference draw up a work plan along the following lines:

A. Institutional capacity building

- UNCTAD should continue to provide and where possible expand, in collaboration with other international organizations active in this field, its technical assistance, advisory and training services. Participants at the Seminar emphasized the following specific needs: clarifying methodologies for defining relevant markets and assessing market power;

- It should continue improving model laws for developing and other countries.

B. Competition advocacy and educating the public

- Public authorities should be given support on competition and on consumer protection and should be helped to educate the public and representatives of the private sectors in the field of competition law and policy; competition advocacy by competition authorities in developing countries should be supported;

- The private sector as well as consumer organizations should be involved in the educational process;

- Programmes on the economics and law of competition policy in universities and professional institutions should be fostered;

C. Studies on constraints to competition

- UNCTAD should continue to study constraints on competition with particular emphasis on:

- "Critical mass" versus domestic rivalry as determinants of competitiveness;

- The treatment of parallel imports as an aspect of the application of competition policy in relation to IPRs;

- The benefits of competition law and policy for consumers; the link between competition policy and investment;

- The link between competition policy, privatization and deregulation;

- The impact of international cartels on developing countries.

D. Inputs to possible international agreements on competition

- UNCTAD should continue to provide inputs to deliberations on possible international agreements on competition, including with respect to the following items:

- What the goals and objectives of developing countries should be;

- The complementarity of cooperation at bilateral, regional and multilateral levels;

- What provisions could be made for special and differential treatment;

- What the roles would be of dispute-settlement alternative complaints mechanisms and progressivity.

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LIVINGSTONE DECLARATION

The Regional Seminar on Competition Law and Policy for Southern and East African Countries, Livingstone (Zambia), 24-25 July 2000, held within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the Livingstone Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TD/B/COM.2/CLP/14).

GE.00-51922 (E)

LIVINGSTONE DECLARATION

1. The Regional Seminar on Competition Law and Policy for Southern and East African Countries was held in Livingstone (Zambia) from 24 to 25 July 2000 within the preparatory process for the Fourth United Nations Conference to Review all Aspects of the Set.

2. Concerned that globalization should be made both more efficient and more equitable, as called for by UNCTAD X in the Bangkok Declaration (paragraph 4 of document TD/387 of 18 February 2000), the Seminar fully supports the view that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the fields of trade, investment, competition and finance ...".

3. During the debates and the exchange of experiences among participants, it emerged that while some developing countries in COMESA and SADC have newly adopted competition legislation, (4) others have older systems that need to be revised in order to improve their effectiveness. Other countries, which are in the majority (15), still have not adopted competition legislation, although most are aware of the issues and some have already prepared draft bills and are receiving technical assistance from UNCTAD and other international organizations. The COMESA Protocol provides in the Treaty a provision for community competition policy to which all members adhere.

4. The Seminar felt that COMESA and SADC members should adopt, improve and effectively enforce appropriate legislation and implement judicial and administrative procedures for the control of restrictive business practices.

5. The importance of cooperation in this respect and the necessity for international norms were underlined, in the formulation of national competition law and policy, while the core principles of competition law and policy as contained in the United Nations Set of Principles and Rules and the COMESA Treaty were recognized as having broad application. Competition legislation and its implementation needs to take into account each country's level of economic development, judicial system, social system and specific characteristics.

6. COMESA member States should base their legislation primarily on the principles contained in the COMESA Treaty Article 55 which aims at eliminating or effectively dealing with acts or behaviour of enterprises which, through an abuse or acquisition and abuse of a dominant position of market power, limit access to markets or restrict intra-COMESA and SADC trade.

7. In order to ensure the equitable application of the Set of Principles and Rules, and the formulation of future international agreements on competition policy, developed countries should take into account the development, financial and trade needs of developing countries for the purposes of promoting the establishment or development of domestic industries and encouraging their economic development through regional or subregional integration groupings among developing countries.

8. Although many COMESA member States are opening up their markets to competition and adopting competition legislation, there persist a number of serious competition problems in the COMESA market, including high levels of concentration and market dominance by a few leading players, weak competition in the import sector and fragile markets. It was felt that these factors pose serious risks to economic integration and liberalization in the region.

9. The Seminar was of the view that a soft and consensus-building approach to regional and international cooperation in the area of competition policy would contribute to a better understanding of the issues involved and may reinforce efforts at reaching international agreements in this area. In this connection, the meeting felt that the voluntary nature of the United Nations set of Multilaterally Agreed Equitable Principles and Rules and the long experience gained with its implementation provide a good basis for consultations and consensus-building on possible international agreements.

10. The importance of competition advocacy in COMESA was underlined with respect to government officials and administrations, as well as market actors including consumers and representatives of the private sector.

11. Accordingly, in line with the UNCTAD X Plan of Action on competition issues and considering the importance of competition policy for promoting economic development and economic welfare, the Seminar recommends that the Fourth Review Conference draw up a work plan along the following lines:

(a) **Assistance to COMESA:** UNCTAD should assist COMESA in the establishment of mechanisms for implementing the COMESA Treaty on competition policy through seminars, workshops, training and technical advice.

(b) In view of the fact that several countries are members of both COMESA and SADC, UNCTAD is called upon to assist the SADC member States in the establishment and enforcement of competition law and policy through seminars, training and legal advice.

(c) **Institutional capacity building:** UNCTAD should continue to provide and where possible expand, in collaboration with other international organizations active in this field, its technical assistance, advisory and training services. Participants at the Seminar called upon bilateral and multilateral donors to provide financial and human resources to UNCTAD's technical assistance programme on competition. With respect to priority areas, it emphasized the following specific needs: clarifying methodologies for defining relevant markets and assessing market power; continuing to improve model laws for developing and other countries, it being desirable that COMESA commence the implementation process by the year 2001.

(d) **Studies on constraints on competition:** UNCTAD should continue to study constraints on competition with particular emphasis on the constraints on international competitiveness; the treatment of parallel imports as an aspect of the application of competition policy in relation to IPRs; the benefits of competition law and policy for consumers; the link between competition policy and investment; the link between competition policy, privatization and development; the impact of international cartels on the development of developing countries.

(e) **Inputs to possible international agreements on competition:** UNCTAD should continue to provide inputs to deliberations on possible international agreements on competition, along the lines of paragraph 9 above, including with respect to the following items:

- Can the United Nations Set of Principles and Rules provide a basis for consensus-building in international cooperation in competition policy? If so, what measures need to be taken by UNCTAD to promote this objective?

- What are the various alternatives available for international cooperation in the area of competition policy?

- The complementarity of cooperation at bilateral, regional and multilateral levels;

- What provisions could be made for special and differential treatment of developing countries?

- What would the roles be of dispute-settlement alternative complaints mechanisms and progressivity in the enforcement of an international agreement?

12. In recognition of the need for the broader consultations within the region, SADC should be engaged to participate in the efforts and processes outlined in this Declaration.

Adopted by acclamation in Livingstone, Zambia,
26 July 2000

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SAN JOSE DECLARATION

The Regional Seminar on Competition Law and Policy for Latin America and the Caribbean, held in San José, Costa Rica, from 30 August to 1 September 2000 within the framework of the preparatory process for the Fourth Review Conference, pursuant to paragraph 6 of the agreed conclusions of the Intergovernmental Group of Experts on Competition Law and Policy at its second session,[1] adopted the San José Declaration annexed hereto for submission to the Fourth Review Conference.

[1] Report of the Intergovernmental Group of Experts on Competition Law and Policy on its second session (TD/B/COM.2/19-TB/B/COM.2/CLP/14).

SAN JOSE DECLARATION

The Regional Seminar on Competition Law and Policy for Latin America and the Caribbean was held in San José, Costa Rica, from 30 August to 1 September 2000, as part of the preparatory process for the Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, in cooperation with the Costa Rican Commission for the Promotion of Competition, the United Nations Conference on Trade and Development (UNCTAD) and the Economic Commission for Latin America and the Caribbean.

The Seminar was attended by representatives of 26 countries from the region, representatives of international organizations, including the World Trade Organization, the Inter-American Development Bank, the Andean Community, the Caribbean Community and the Caribbean Common Market, and international bodies such as Consumers International and the International Chamber of Commerce, representatives of international cooperation agencies and representatives of the public and private sectors in Costa Rica.

The Seminar examined various questions relating to national, regional and multilateral competition policies and discussed in depth the extent to which globalization influenced competition policy in different countries. It also examined the relationship between competition and economic development.

Several participants expressed interest in studying the content of a possible multilateral agreement on competition. The following subjects were among those mentioned: supranationality, general standards and principles, sectoral coverage, cooperation mechanisms (including technical cooperation) and special and differential treatment.

All participants found the presentation of case studies on the development of competition law and its implementation rewarding. The relevance of historical tradition and the fact that the countries of the region shared a common culture were emphasized as they provided the context that defined the content and implementation of competition law.

In addition, there was a discussion on the experiences of countries in the high technology, tourism, telecommunications and energy sectors, which highlighted the benefits of competition. The discussion brought out the common experiences in investigative procedures and, in particular, the relationship between competition authorities and regulatory bodies for public services. In the discussion on the relationship between competition and consumer protection, the importance of having a legal framework to protect the consumer was highlighted. The Seminar also afforded the opportunity for a very fruitful exchange of views on the relationship between competition policy and intellectual property.

Finally, within the framework of the objectives of the seminar, participants agreed to make the following recommendations:

- Practical proposals should be drawn up to encourage cooperation between the various authorities in the region. In particular, it is necessary to set up permanent communications systems between the authorities, focusing on the exchange of information on experiences with institution-building and on cases of mutual interest.

- UNCTAD should, in accordance with paragraphs 140 to 143 of the UNCTAD X Plan of Action:

  - Support competition advocacy programmes;

  - Conduct studies to identify the benefits of competition policy for countries' economic development;

  - Help Governments to ensure that any multilateral agreement on competition reflects the needs of the developing countries, particularly those with small and vulnerable economies;

  - Seek out regional cooperation options to combat cartels.

- UNCTAD should study the effects of competition on micro-economies (such as those of the small islands in the Caribbean). It should also analyse the benefits that a competition policy should deliver, especially with regard to foreign investment.

- UNCTAD should support efforts to advise on and coordinate competition policies in the relevant regional forums.

- UNCTAD should study the use of and the reasons for sectoral exceptions in competition legislation, and should assess their effects on both developing and developed countries.

- The main objective of competition law should be to protect consumers' interests.

- UNCTAD should explicitly include consumer protection and unfair competition in its studies.

- That organization should also undertake more studies on the relationship between competition law and intellectual property, particularly with reference to the international exhaustion of rights, compulsory licensing and the balance between static efficiency and dynamic efficiency.

- The effectiveness of training and technical cooperation should be improved through monitoring and peer reviews carried out by similar competition authorities, by setting up regional forums.

- Moreover, UNCTAD should include the subject of competition law and policy in the terms of reference of the regular training courses envisaged in paragraph 166 of the Bangkok Plan of Action. UNCTAD should develop a curriculum on competition law and policy for use in postgraduate programmes in selected universities in the region.

- In the light of paragraph 140 of the UNCTAD X Plan of Action, UNCTAD should strengthen its technical assistance and training programmes, both for those countries that still have no competition law or consumer protection and for those that need to amend their existing legislation.

- Bearing in mind the wealth of experience the countries in the region have gained in recent years in controlling anti-competitive practices, UNCTAD should take stock of the cases with effects in more than one country in the region, the problems encountered in controlling those cases, the degree and efficiency of cooperation between competition authorities, those cases in which no success has been achieved and those sectors still affected by international cartels.

- UNCTAD should permanently monitor and periodically publish information on global mergers and acquisitions and their effects on competition.

The participants would like to thank the Costa Rican Commission for the Promotion of Competition for the excellent organization of the event and for its generous hospitality.

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FOURTH UNITED NATIONS CONFERENCE TO REVIEW ALL ASPECTS
OF THE SET OF MULTILATERALLY AGREED EQUITABLE
PRINCIPLES AND RULES FOR THE CONTROL OF
RESTRICTIVE BUSINESS PRACTICES
Geneva, 25 September 2000

REPORT OF THE CREDENTIALS COMMITTEE

1. At its first plenary meeting held on 25 September 2000, the Conference, in accordance with rule 5 of its rules of procedure, appointed 9 members of the Credentials Committee: China, Cuba, Gabon, Germany, Mauritius, Russian Federation, Thailand, United States of America and Venezuela.

2. The Committee held a meeting on 28 September 2000, at which it unanimously elected Mr. Pornchai DANVIVATHANA (Thailand) as Chairman of the Credentials Committee.

3. Credentials had been received from all the States participating in the Conference.

4. The Committee found the credentials of the representatives of the States participating in the Conference to be in good and due form and recommended to the Conference that they be approved.

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United Nations Conference on Trade and Development

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4 October 2000

Original: ENGLISH

Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices
Geneva, 25 September 2000
Agenda item 6

REVIEW OF ALL ASPECTS OF THE SET OF MULTILATERALLY AGREED EQUITABLE PRINCIPLES AND RULES FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES

Resolution *

The Fourth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices,

Having reviewed all aspects of the Set of Multilaterally Agreed Principles and Rules for the Control of Restrictive Business Practices, 20 years after its adoption, and recognizing the positive contribution made by the Set, by the Expert Meeting on Competition Law and Policy and the 1998 and 1999 sessions of the Intergovernmental Group of Experts on Competition Law and Policy to the promotion of competition,

Noting the major changes which have taken place in the world economy, including the role of TNCs and the reforms introduced by the developing countries and countries with economies in transition in recent years towards liberalization of economies and development of competition laws and policies,

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* As adopted at the final (closing) plenary on Friday, 29 September 2000.

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Taking note of the decisions on competition issues adopted by UNCTAD X in paragraphs 140-143 of the Bangkok Plan of Action (TD/386),

Noting also the concern that globalization should be made more efficient and equitable, as called for in the Bangkok Declaration (TD/387, para. 4) in which the Conference declared that "in addition to national efforts, the international community as a whole has the responsibility to ensure an enabling global environment through enhanced cooperation in the fields of trade, investment, competition and finance",

Taking into account the proposals contained in the agreed conclusions adopted by the Intergovernmental Group of Experts on Competition Law and Policy at its second session (TD/B/COM.2/19), as well as the recommendations made by the regional and subregional seminars in Jaipur (India) for Asia and the Pacific; Kiev (Ukraine) for Central and Eastern Europe and the CIS member countries; Casablanca (Morocco) for African and Arab countries; Livingstone (Zambia) for Southern and East Africa; and San José (Costa Rica) for Latin America and the Caribbean,

Recalling the Bangkok Declaration, which emphasizes the interlinkages which still exist between equity and efficiency in the globalization process and the crucial role that competition law and policy, with its concern for both economic efficiency and consumer welfare, play in making such interlinkages operational; without controls on anti-competitive practices, it is unlikely that all the benefits of liberalization and globalization will be passed on to consumers,

Convinced of the need to disseminate the culture of competition,

1. Reaffirms the validity of the UN Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices, recommends to the General Assembly to subtitle the Set for reference as "UN Set of Principles and Rules on Competition", and calls upon all member States to implement the provisions of the Set;

2. Reaffirms further the fundamental role of competition law and policy for sound economic development, and recommends the continuation and strengthening of the important and useful work programme within UNCTAD's secretariat and the intergovernmental machinery that addresses competition law and policy issues and proceeds with the active support and participation of competition law and policy authorities of member countries;

3. Further recommends that the General Assembly convene a Fifth United Nations Conference to Review all Aspects of the Set of Principles and Rules on Competition, to be held in Geneva, under UNCTAD auspices, in the year 2005;

4. Invites UNCTAD's Commission on Trade in Goods and Services, and Commodities, at its next session, to consider convening an Expert Meeting on Consumer Policy as a distinct body from the Intergovernmental Group of Experts on Competition Law and Policy;

5. Calls upon States to increase cooperation at all levels between their competition authorities and Governments in order to strengthen effective action in the field of merger control and against cartels as covered by the Set, especially when these occur at the international level;

6. Notes that, while bilateral competition cooperation efforts are essential, there is need to promote regional as well as multilateral competition initiatives, particularly for smaller and developing economies, and requests the UNCTAD secretariat to study the possibility of formulating a model cooperation agreement on competition law and policy, based on the UN Set of Principle and Rules on Competition;

7. Takes note with appreciation of the documentation prepared by the UNCTAD secretariat for the Conference, and requests the secretariat to revise documents TD/RBP/CONF.5/4, TD/RBP/CONF.5/5, TD/RBP/CONF.5/6 and TD/RBP/CONF.5/7 in the light of comments by member States made at the Conference or to be sent in writing by 31 January 2001 for submission to the next session of the Intergovernmental Group of Experts on Competition Law and Policy, and make them available through UNCTAD's Website;

8. Decides that the Intergovernmental Group of Experts on Competition Law and Policy at its 2001 session will consider the following issues for better implementation of the Set, in relation to the studies prepared by the UNCTAD secretariat:

(a) Cooperation regarding merger control;

(b) The interface between competition policy and intellectual property rights;

9. Requests further the Secretary-General of UNCTAD to take stock of anti-competitive cases with effects in more than one country, and the problems encountered in investigating the cases, to study the degree of efficiency of cooperation between competition authorities and governments in solving them;

10. Commends the secretariat on the revised Model Law (TD/RBP/CONF.5/7) and its new format, takes note that the commentaries contained therein do not affect the discretion of countries to choose policies considered appropriate for themselves, and requests the UNCTAD secretariat to revise periodically the commentary to the Model Law in the light of legislative developments and comments made by member States for consideration by future sessions of the Intergovernmental

Group of Experts on Competition Law and Policy, and to disseminate widely the Model Law an its commentary as revised;

11. Requests the secretariat to prepare for the Intergovernmental Group of Experts o Competition Law and Policy in 2001 a new chapter of the model law on the relationship between competition authority and regulatory bodies, including sectoral regulators;

12. Requests the secretariat to continue to publish the following documents on a regular basi and to make them available on the Internet:

(a) Further issues of the Handbook on Competition Legislation, including regional and international instruments, which should be complemented with a summary of th main provisions of competition laws on the basis of inputs to be submitted b member States;

(b) An updated version of the Directory of Competition Authorities; and

(c) An information note on recent important competition cases, with special reference to competition cases involving more than one country, and taking into accoun information to be received from member States;

13. Takes note with appreciation of the new UNCTAD Competition Law and Policy Websit and requests that forecasted events such as seminars and other assistance be indicated as far a possible in advance to allow member States to be informed and to be in a position to participate i the technical assistance activities organized or sponsored by UNCTAD;

14. Takes note with appreciation of the voluntary financial and other contributions for capacit building and technical cooperation, and invites all member States to assist UNCTAD on voluntary basis in its technical cooperation by providing experts, training facilities or resource requests the UNCTAD secretariat to continue and, resources permitting, expand its technica cooperation activities; and invites the Secretary-General of UNCTAD to explore the feasibility o mobilizing financial and human resources on a more predictable and regular basis and to addres the cooperation needs of developing countries and economies in transition in the relevant offici languages of the United Nations;

15. Decides that, in the light of the UNCTAD X Plan of Action (TD/386) as it relates t competition issues, the Intergovernmental Group of Experts on Competition Law and Polic should draw up its work plan along the lines indicated below.

A. Institutional capacity building

16. In accordance with the mandate given in the Bangkok Plan of Action and within available resources, UNCTAD should continue to provide and where possible expand, in coordination with member States and with other international organizations active in this field, its technical assistance, advisory and training services by *inter alia*:

(a) Exploring and clarifying methodologies for defining relevant markets and assessing market power;

(b) Increasing the effectiveness of training and technical assistance through regular experience sharing and by setting up regional forums;

(c) Supporting efforts to advise and coordinate competition initiatives in national, regional and international fora, in particular by providing advice on all aspects of the establishment of competition authorities and continuing to organize regular meetings of competition authorities at the regional level;

(d) Including the subject of competition law and policy in the syllabus of training courses envisaged in paragraph 166 of the Bangkok Plan of Action; developing a syllabus on competition law and policy, including economic analysis used in enforcing competition law, to be used by trainers in interested countries, including through available regional training centres and postgraduate programmes in universities.

B. Competition advocacy and educating the public

17. UNCTAD should:

(a) Provide support to public authorities on competition and on consumer protection and assist them in educating the public and representatives of the government and private sectors in the field of competition law and policy;

(b) Promote competition advocacy activities by competition authorities in developing countries and countries with economies in transition;

(c) Study the feasibility of establishing a UN World Competition and Consumer Day as a means of publicizing benefits to consumers of competition policy and educating the public at large.

C. Studies on competition, competitiveness and development

18. UNCTAD should continue to study the issues of competition, competitiveness and development with particular emphasis on:

(a) Merger control issues, including in the process of privatization;

(b) Recalling paragraph 143 of the Bangkok Plan of Action, studying, clarifying and monitoring, including through specific country and case studies, the relationship between competition and competitiveness, as well as trade-related aspects of competition in accordance with the Set;

(c) Periodically publishing information on mergers and acquisitions, particularly as they affect the development and integration of developing countries and countries in transition into the world economy;

(d) Priorities of implementation and enforcement of competition policy and their relationship with the existence of an important informal sector in developing countries;

(e) The benefits of competition law and policy for consumers and in poverty alleviation;

(f) The benefits of competition policy for economic development;

(g) The links between competition policy and foreign investment;

(h) The implications of competition policy for small and micro economies and the opportunities for regional integration schemes in this field;

(i) The importance of competition policy in privatization and deregulation exercises;

(j) Undertaking, through a comparative study, an inventory of the scope and coverage of existing competition legislation, including sectoral exceptions, and implications for developing countries' development policies;

(k) The relationship between competition policy and promotion of SMEs.

D. Inputs to possible international agreements on competition

19. UNCTAD should continue to provide inputs to deliberations on possible international agreements on competition, including with respect to the following items:

(a) Pursuing consensus building activities by organizing national and regional meetings that could clarify competition issues and contribute to a better understanding of such issues;

(b) Contributing to identifying the goals and objectives of developing countries in competition law and policy;

(c) Exploring the effectiveness and complementarity of cooperation at bilateral, regional, plurilateral and multilateral levels;

(d) Clarifying the ways in which possible international agreements on competition might apply to developing countries, including through preferential or differential treatment, with a view to enabling them to introduce and enforce competition law and policy;

(e) Studying the roles of possible dispute mediation mechanisms and alternative arrangements, including voluntary peer reviews, in competition law and policy.